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## Contracting Officer Brief

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## FUNDING INSTRUMENTS

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- **Grant** - the **principal purpose** of the instrument is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a Federal statute and **substantial involvement is not expected** between DARPA, acting for the Federal Government, and the recipient during performance of the contemplated activity
- **Cooperative Agreement** - the **principal purpose** of the instrument is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by Federal statute, and **substantial involvement is expected** between DARPA, acting for the Federal Government, and the recipient during performance of the contemplated activity



## FUNDING INSTRUMENTS

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- **Contract** - the principal purpose of the instrument is **acquisition by purchase, lease, or barter of property or services for the direct benefit** or use of the Federal Government or whenever DARPA determines in a specific instance that the use of a type of procurement contract is appropriate
- **Other Transaction for Research/Technology Investment Agreement (TIA)** - **when a contract, grant or cooperative agreement is not feasible or appropriate**, DARPA may enter into an other transaction that facilitates the accomplishment of its mission, which is not contrary to law, and which is in the public interest



# FUNDING INSTRUMENTS

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- Other Transaction for Prototype - a legally binding instrument other than a procurement contract, grant, cooperative agreement, or other transaction for research/TIA **used for a prototype project** proposed to be acquired or developed by the Department of Defense (DoD)



# TOOL BOX

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Acquisition		Non-Acquisition				
Procurement Contracts	Non-Procurement Contracts	Grants	Cooperative Agreements		OTs	
10 U.S.C. 2304 31 U.S.C. 6303  ↓ Federal Acquisition Regulations	*Non-appropriated funds contracts	10 U.S.C. 2358	10 U.S.C 2358	Technology Investment Agreements (TIAs)		Other 10 U.S.C. 2371
		31 U.S.C. 6304	31 U.S.C. 6305	10 U.S.C. 2358	10 U.S.C. 2371 (a) & (d)	
	*Section 845		Traditional	Flexible	Multi-Party Commercial Firm Consortia	Bailments Lease Arrangement Loan-to-Own
PART 15	PART 12 Commercial Items	*NASA Space Act	OMB Circ.	Recoupment Authority 10 U.S.C. 2371(d)	Consortia Recoupment Authority 10 U.S.C. 2371(d)	
Cost/Price Based	Price Based	Exception to Bayh-Dole Act	DODGAR	DDRE Letter	DDRE Letter	
		OMB Circ.	OMB Circ.	Bayh-Dole Act	Exception to Bayh-Dole	
		DODGAR	DODGAR	Bayh-Dole Act		
		Bayh-Dole Act	Bayh-Dole Act Lore			

**CRADA** - A legal agreement between a federal laboratory and industry used for the transfer of commercially useful technologies from federal laboratories to the private sector and to make accessible unique technical capabilities and facilities.



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# Questions???



# TECHNOLOGY INVESTMENT AGREEMENT (TIA)

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## TECHNOLOGY INVESTMENT AGREEMENT (TIA)



# TECHNOLOGY INVESTMENT AGREEMENT (TIA)

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- TIAs are flexible instruments!!!
  - Reduce barriers to encourage participation by for-profit firms that have not traditionally done business with the Government.





# TECHNOLOGY INVESTMENT AGREEMENT (TIA)

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- Barriers include:
  - \*Standards for financial management systems
  - \*Cost principles
  - \*Rights to technical data and computer software
  - Patent rights
- Flexibility permitted under part 37 of the interim - guidance draft of DODGARS for Cooperative Agreements under 10 U.S.C. 2371.



# TECHNOLOGY INVESTMENT AGREEMENT (TIA)

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- Is a TIA appropriate?
  - Factors to consider:
    - The nature of the project
      - Stimulation or support of research
      - Relevance to integrating the technology and industrial bases
    - The type of recipient
      - A for-profit firm is to be involved in the research project
      - Usually appropriate for consortiums
      - Single firm: sharing of technology between a firm's government and commercial divisions



# TECHNOLOGY INVESTMENT AGREEMENT (TIA)

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- Is a TIA Appropriate?
    - Factors to Consider (continued)
      - The Recipient's Commitment and Cost Sharing
        - Evidence of Self-Interest in Incorporating Technology into Products
        - To Maximum Extent Practicable, Non-Federal Parties Provide at Least Half the Resources from Non-Federal Sources
      - Degree of Involvement of the Government Program Official
        - Greater programmatic involvement before and during program execution
        - Participation in periodic review of progress and revisions of plans for future efforts



# TECHNOLOGY INVESTMENT AGREEMENT (TIA)

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- Bayh-Dole Statute  
(*Chapter 18 of Title 35, U.S.C.*)
    - License for Government purposes -- non-exclusive, non-transferable, irrevocable, paid-up license to practice or have practiced such inventions for or on behalf of the United States throughout the world.
  - Flexibility:
    - Possible in allowing more time to:
      - Notify the government of an invention
      - Inform the government of intent to take title to an invention
      - Commercialize an invention before government license rights take effect



# TECHNOLOGY INVESTMENT AGREEMENT (TIA)

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- No government rights except march-in
- Government approval of foreign access to technology
  - A reasonable license for government use will be negotiated



# TECHNOLOGY INVESTMENT AGREEMENT (TIA)

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- Payments
  - Cost reimbursement
  - Advance payment
  - Payable milestones
- Payable milestones
  - Predetermined measures of observable, technical progress
  - If project expenditures do not approximate payment for completed milestones
    - Adjust future payments as needed
- Interest



# TECHNOLOGY INVESTMENT AGREEMENT (TIA)

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- Process
  - Recipients selected competitively, usually via BAA or RA
  - Kickoff meeting involving technical, acquisition, and legal personnel from both sides
  - Consortium drafts its articles of collaboration
  - CMO Contracting Officers negotiate from model agreement, tailoring provisions to situation
  - Only deviations from model need to be justified



# OTHER TRANSACTION FOR PROTOTYPE

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# OTHER TRANSACTION FOR PROTOTYPE





# OTHER TRANSACTION FOR PROTOTYPE

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- 10 U.S.C. 2371 was enhanced by Section 845 of National Defense Authorization Act of 1994; as amended by Sec. 804 (Pub. Law 104-201); as amended by Sec. 803 (Pub. Law 106-398)
- The Director of DARPA and the Secretary of Military Departments may use “Other Transactions” for ***Prototype projects*** that are ***directly relevant to weapons or weapon systems proposed to be acquired or developed*** by the DoD
- 3 year authorization (through 9/30/04)



# OTHER TRANSACTION FOR PROTOTYPE

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- “Prototype”:
  - “...a physical or virtual model used to evaluate the technical or manufacturing feasibility or military utility of a particular technology or process, concept, end item, or system”
- “directly relevant”
- “weapons or weapon systems”
- “proposed to be acquired”



# OTHER TRANSACTION FOR PROTOTYPE

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## Limitations/Challenges:

- OT for Prototypes applicable for “research” only
- Transition
- Considerations - competition, data rights, compliance with DoD 5000, documentation
- Criminal statutes, fiscal law, general laws
- Culture



# OTHER TRANSACTION FOR PROTOTYPE

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## Benefits:

- Outside of procurement laws and regulations (FAR & DFARS)
- Competition, only to the maximum practicable extent
- With or without resource (cost ) sharing
- Flexibility, Flexibility, Flexibility



# OTHER TRANSACTION FOR PROTOTYPE

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## RECENT STATUTORY CHANGE

When the OT is entered into, the team must have:

- 1/3 cost share of the total cost of the program, or
- At least one nontraditional defense contractor is participating to a significant extent, or
- SPE determines exceptional circumstances



## OTHER TRANSACTION FOR PROTOTYPE

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“Nontraditional”: An entity that has not, for a period of one year, entered into or performed:

- A contract subject to full CAS coverage
- or,
- A FAR-based contract in excess of \$500K
  - To carry out prototype projects or
  - To perform basic, applied or advanced research



## OTHER TRANSACTION FOR PROTOTYPE

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### “Significant Contribution”:

- OT Guide – The contribution causes a material reduction in the cost or schedule or increases the performance of the prototype.
- The non-traditional performer is responsible for a key component, technology, or process without which the prototype cannot be successfully developed.



# OTHER TRANSACTION FOR PROTOTYPE

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- Food for Thought
  - Changes
    - No Government directed unilateral changes
    - No claims for equitable adjustment caused by changes
  - Termination
    - No “Termination for Default”
    - No “Termination for Convenience”





# OTHER TRANSACTION FOR PROTOTYPE

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- Food for Thought (*continued*)
  - Costs
    - No mandatory cost principles or accounting standards
  - Subcontracting
    - Government system not required
    - No mandatory clause flowdowns
  - Management structure
  - Sound business judgment absolutely necessary
  - Team Approach